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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1076th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 July 1991, at 3 p.m.

Chairman: Mr. DIMITRIJEVIC

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The meeting was called to order at 3.25 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

General comment on article 7 of the Covenant (CCPR/C/42/CRP.2) (continued)

1. The CHAIRMAN invited the Committee to resume its consideration of the Working Group's recommendation for a general comment on article 7 of the Covenant.

Paragraph 7

2. Mrs. HIGGINS thought that the paragraph should be strengthened by being drafted in such a way as to make it clear that States parties had to take into account the situation regarding torture practised by States to which they proposed to extradite, expel or return (refouler) a person. She therefore proposed the following text: "States parties are reminded that, when considering the return to other countries of refugees and asylum-seekers, the prohibition against refoulement forbids extradition, expulsion or return to a State practising torture. States parties should indicate in their reports how they give effect to the prohibition against refoulement".

3. Mr. NDIAYE said that he had some difficulty with Mrs. Higgins' proposal. He did not think that it was in the Committee's interest to equate issues relating to extradition and expulsion with those concerning refoulement. Extradition procedures were such that it would be possible to know whether returning a person to his country would expose him to the risk of being tortured. With regard to refoulement, however, if persons seeking asylum in a country did not comply with certain regulations, they could be returned to their country.

4. Miss CHANET said that she did not fully agree with Mr. Ndiaye with regard to the distinction that should be made between extradition and refoulement, each of which involved a different judicial procedure. What counted as far as the Committee was concerned was the result, namely the situation of the person in the country to which he was returned.

5. With regard to Mrs. Higgins' proposal, she thought that a compromise solution might be not merely to request States to take account of the situation but to remind them that it would be preferable not to extradite, expel or return a person in order to be in accordance with article 7 of the Covenant.

6. After a discussion in which Mr. NDIAYE, Mrs. HIGGINS, and Mr. AGUILAR URBINA took part, Mr. MYULLERSON said that he wished to propose the following compromise text: "States parties should indicate in their reports whether they take account of the situation regarding torture practised by States to which they propose to extradite, expel or return a person who may be tortured in his country or may be subjected to torture and cruel, inhuman and degrading treatment".

7. Mrs. HIGGINS welcomed the amendment proposed by Mr. Myullerson.

8. On reflection, she thought that her original proposal was too broad and that the end of the first sentence should be amended to read "... return to a country where they are at risk of being tortured".

9. The CHAIRMAN said that, while he understood the general desire to strengthen the paragraph, he did not think that it should go so far as to parallel a provision from the Convention against Torture. He therefore wished to suggest the following text: "In the view of the Committee, States parties should not expose individuals to the dangers of torture and cruel, inhuman and degrading treatment as a consequence of extradition, expulsion or return (refoulement). States should indicate in their reports to what extent they take account of the situation regarding torture practised by States when deciding to apply one of the measures referred to in the preceding sentence".

10. In response to a point raised by Mrs. HIGGINS, the CHAIRMAN said that the second sentence of his suggested text should be amended to read: "States parties should indicate in their reports what measures they have taken to protect persons facing such procedures".

11. Mr. HERNDL expressed the opinion that the latter proposal, which included the word "protect", seemed to go rather further than was the intention of the Committee; it was not so much a matter of protecting as of ensuring that the principle of non-refoulement was respected. He therefore preferred the words "to what extent they take account of the situation".

12. The CHAIRMAN suggested that the use of the word "safeguards" might be appropriate. Thus, the first sentence of the paragraph would remain as he had read it out earlier and the second sentence would read: "States parties should indicate in their reports what safeguards they have provided to that end".

13. Paragraph 7, as amended, was adopted.

Paragraph 8

14. Mr. PRADO VALLEJO observed that it was his experience, based on the situation in his country and region, that in practice acts of torture and cruel, inhuman and degrading treatment were in many cases not directly inspired by the Government itself but were committed by police or other officers at a lower level. When a complaint concerning torture or maltreatment was made it became incumbent upon the police to investigate, thus making the latter both judge and party to the act. As a result, the investigatory process lost some of its force, as members of the police were reluctant to create problems within their own ranks. To overcome that problem, paragraph 8 might refer to the investigation of alleged cases of torture or cruel, inhuman and degrading treatment by means of appropriate and effective mechanisms in order to discover the authors of the act or to propose preventive measures.

15. Mr. ANDO referred in that context to the second sentence of paragraph 13 of the general comment.

16. Mr. PRADO VALLEJO agreed that the point might well be covered in that paragraph.

17. Paragraph 8 was adopted.

Paragraph 9

18. Mr. SADI, referring to the last phrase of paragraph 9, remarked that "ethical rules" were hardly binding and that a stronger term might be more appropriate.

19. Mrs. HIGGINS endorsed Mr. Sadi's comment and suggested that "rules of conduct" might be a suitable expression.

20. Mr. NDIAYE observed that the French text adequately expressed what was intended.

21. Mr. SADI proposed the words "rules and regulations".

22. Mr. WENNERGREN said that, as he saw it, the intent of the paragraph was to cover ethical and legal aspects, both of which were pertinent. He would therefore have no difficulty in accepting the term "rules of conduct", which implied both.

23. Mr. AGUILAR URBINA said that the wording proposed by Mr. Sadi expanded upon and better conveyed the intention of the Committee.

24. The CHAIRMAN observed that the intention of the latter part of paragraph 9 was to reflect the need for an internalization of rules; in other words, rules to prevent cruelty should become part of the ethics of members of the police and other relevant bodies.

25. Mr. MYULLERSON endorsed the Chairman's interpretation; while such acts were already prohibited by international and most domestic legislation, what must be ensured in practice was that the spirit of such legislation should be reflected in the conduct of police officers and other personnel.

26. Mr. PRADO VALLEJO, speaking on another aspect of the same sentence, proposed that the word "special" should be replaced by "appropriate".

27. The CHAIRMAN suggested that "special instruction and training in that regard" might be replaced by "appropriate instruction and training for the discharge of their duties".

28. Mr. SERRANO CALDERA supported Mr. Prado Vallejo's proposal. Concerning the last part of the sentence, he suggested wording to the effect that the prohibition of article 7 should form an integral part of the ethical values or moral principles of the persons concerned.

29. Miss CHANET endorsed Mr. Prado Vallejo's proposal. Regarding the latter part of the sentence, she was in favour of retaining the reference to ethical rules in view of the fact that medical personnel were included. In that respect, she referred to the wording of article 10 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30. Mr. AGUILAR URBINA also endorsed Mr. Prado Vallejo's proposal. Concerning the last part of the sentence, it should be borne in mind that the instruction and training referred to was not of a general nature but was restricted to the context of the prohibition of torture. He suggested that the words "ethical and professional rules and regulations" might be used.

31. Mrs. HIGGINS, agreeing with the emerging consensus, proposed the wording "forms an integral part of the operational rules and ethical standards to be followed by such personnel".

32. The CHAIRMAN said he took it that paragraph 9 should be amended to use the word "appropriate" in place of "special" and to incorporate the proposal made by the previous speaker.

33. Paragraph 9, as amended, was adopted.

The meeting rose at 4.30 p.m.